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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding

To: The Commission - Mail Stop 1170

PP Docket No. 93-253

RECEIVED

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COMMENTS OF RADIO TELECOM AND TECHNOLOGY, INC.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

1. Radio Telecom and Technology, Inc. ("RTT") hereby submits these comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned matter, FCC 93-455, released October 12, 1993 ("Notice"). RTT is a leading developer of technology to be used in the Interactive Video and Data Service ("IVDS").^{1/} IVDS is a service in which the Commission has proposed to issue licenses by competitive bidding.^{2/} These comments are addressed to how the Commission should deal with requests for rule waivers relating to applications processed under competitive bidding procedures.

2. RTT supports the basic proposal to use competitive bidding to award IVDS licenses and agrees that IVDS fits within the statutory definition of services where auctions should be used. Indeed, RTT further believes that competitive bidding will affirmatively serve the public interest, by awarding IVDS licenses to parties who are most likely to have the ability and

^{1/} RTT's technology is known as "T-NET."

^{2/} Notice, Pages 48-49, par. 142-144.

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resources to develop successful IVDS systems, and by discouraging applications by spectrum speculators.

3. As recognized at Page 33 (par. 99) of the Notice, under a system where only a preliminary or "short form" application is reviewed by the Commission before the bidding session, and detailed application information is reviewed only from the high bidder, a question is raised about when and how requests for rule waivers should be evaluated. This question is particularly serious for RTT, because its "T-NET" IVDS technology, which it expects to be widely implemented, requires a rule waiver to allow the use of a centralized tall base station antenna at a power level in excess of what is normally permitted for multiple small base stations in a cellular configuration.^{3/} Thus, most if not all IVDS bidders who plan to use T-NET will require a rule waiver.

4. A prospective bidder who desires a rule waiver will obviously want to know whether or not the waiver will be granted before making its bids at the auction. This is especially so if the bidder has an up-front, non-refundable deposit at risk; but it is true even if the deposit is fully refundable if the waiver is later denied. If the deposit is not refundable, the bidder will obviously be reluctant to risk much money at the auction. Thus the bidder will be disadvantaged because of uncertainty over its prospects of ultimately being awarded a license, and the Government will be disadvantaged because the bidder will not make

^{3/} The power limit is found in Section 95.859(a) of the Rules.

as high a bid as it otherwise might if it knew its waiver request would be granted. If the deposit is refundable, the bidder will still be reluctant to bid as much as the license may be worth, because the cost of constructing and operating might be affected by whether or not the waiver is granted.^{4/} Thus the bidder will have to restrict its bid to the value of the license without the waiver, and the Government would not receive maximum value for the spectrum.

5. One way to resolve the waiver problem is to allow applicants to request waivers when they first file their applications and for the Commission to rule on waiver requests prior to the auction. That approach has the disadvantage of requiring the Commission to expend resources evaluating waiver requests from potentially large numbers of applicants whose applications may not survive the auction and thus may never become ripe for grant.

6. Another approach is for the Commission to issue declaratory rulings regarding waiver requests prior to the auction. This approach is especially desirable in situations like that of T-NET, where a similar type of waiver request is likely to arise often in the context of many applications.^{5/} However, the Pri-

^{4/} In the case of T-NET, denial of a waiver would likely make it necessary to construct many base stations not required for effective operation of the IVDS system, thereby substantially increasing the cost of construction and maintenance and reducing the value of the license accordingly.

^{5/} Ruling on waivers in advance may be less practical in individualized situations where the facts and circumstances requiring a waiver are unique and must be addressed on a case-by-case basis, but that is not a reason to reject the idea of ruling in
(continued...)

vate Radio Bureau ("PRB") has rejected the concept of an advance declaratory ruling on a waiver request, taking the position that a waiver may be granted only in the context of a specific application. Attached hereto as Exhibit 1 is a copy of a letter from the PRB, dated June 29, 1993, declining to grant an advance waiver of Section 95.859(a) of the Rules, because no specific application was then before it. RTT requested the waiver in advance to provide assurance to IVDS applicants that if they won the IVDS lottery and proposed to use a T-NET system in the application they filed after the lottery,^{6/} they would not risk rejection of their proposal and loss of what they were fortunate enough to have won in the lottery.^{7/} Although the PRB commented favorably on the merits of the information submitted by RTT, it declined to make any definitive statement as to how it would rule on that information if submitted with a specific application later on.

5/(...continued)

advance on waiver requests in cases where similar circumstances are likely to arise frequently in the future.

6/ IVDS applicants initially filed only Form 155 with their name, address, signature, and filing fee. Each lottery winner was required to file a specific technical proposal on Form 574 within two business days after public notice of the results of the lottery.

7/ RTT is not aware of any of the initial 18 IVDS lottery winners' having taken the risk of proposing a T-NET system and requesting a waiver in their initial filing on September 22, 1993. Thus those licensees who ultimately decide that the T-NET system is best for them will end up having to file modification applications, and the Commission' Staff will have to go through another review process. At least five of the 18 initial tentative selectees have told RTT they felt that prudence dictated not requesting a waiver until they had an actual license in hand.

7. RTT submits that the competitive bidding process will not achieve its economic goals if prospective bidders are not able to determine in advance what kind of system they are bidding to build, including whether a critical rule waiver will be granted.^{8/} It may turn out that no one will take the risk of requesting a waiver; and in all events, applicants will be inclined to bid less when faced with uncertainty over a waiver than they would if they knew that the waiver would be granted.^{9/} Therefore, the Commission should adopt a procedure allowing developers like RTT to request and obtain a ruling on waiver requests in advance of the filing of applications (or at least in advance of the auction). Alternatively, the Commission must allow applicants to request and receive rulings on waiver requests before bidding is opened.

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Respectfully submitted,


Peter Tannenwald

Counsel for Radio Telecom
and Technology, Inc.

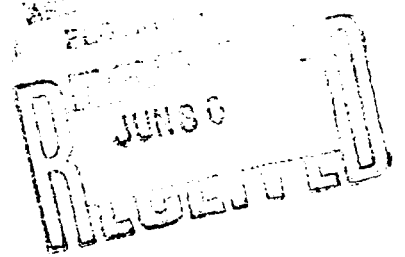
November 9, 1993

^{8/} One could take the position that only the first bidder is disadvantaged, because after one waiver has been granted, it will serve as precedent for future waivers, so future bidders will be more comfortable in assuming they will receive similar treatment. That position does not solve the problem, however, because the burden on the first bidder is so heavy that perhaps no one will take the risk, so there may never be a first waiver. Also, the grant of a waiver to one individual applicant may serve as a precedent, but there is always an element of uncertainty about how strongly it will control future cases.

^{9/} If the waiver were denied in advance, the Government would also benefit in not having to deal with the problem of what to do if an auction winner is later disqualified.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

29 JUN 1993



IN REPLY REFER TO:
1700C1

Peter Tannenwald, Esquire
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Ave., N.W.
Washington, D.C. 20036-5339

Dear Mr. Tannenwald:

This is in reply to your letter written on behalf of Radio Telecom and Technology, Inc., (RTT) requesting a ruling on whether the technical showing you submitted will be sufficient to justify a waiver of the Interactive Video and Data Service (IVDS) rules to permit power levels in excess of the limits specified in Section 95.859(a) when RTT's "T-NET" technology is employed. According to your submission, the T-NET system avoids interference to reception of TV channel 13 by timing transmissions to occur during the blanking interval of a nearby Channel 13 television station. You also ask for clarification on two other IVDS matters.

All requests for a waiver of the IVDS power limits must be made in the context of a specific application for license. As RTT's request was not submitted as part of an IVDS license application, we cannot rule on it at this time. Nevertheless, while it is not possible to state at this time how the Commission will rule on future requests, the convincing showing submitted is the kind of information the Commission would want to see in evaluating such a waiver request.

You also inquire about the 39 dBu coverage requirement in Section 95.815(d) and how it relates to the construction requirements in Section 95.833 when IVDS spectrum is used primarily as an uplink (from the RTU to a central location) and the downlink is conducted primarily through other technologies. Consistent with the Commission's goals in Docket 91-2 of encouraging the development of innovative communications systems and not precluding alternative systems or technologies, IVDS frequencies may be used to provide both links in a two-way interactive system or just one link, either the link to the customer's premise or the return link. Regardless of whether IVDS spectrum is used for one link or both, licensees must still meet the coverage and construction requirements. In system designs such as proposed by RTT where IVDS spectrum is used primarily for the uplink, licensees must make service (39 dBu) available to at least 50 percent of the population or land located within the service area via the TV station transmitter.

Peter Tannenwald, Esquire

2.

Finally, you ask about whether the Form 574 that must be filed within two days after IVDS tentative selectees are chosen must specify specific CTS transmitter sites where the 6.1 meter (20 foot) criteria will be exceeded. CTSs that do not meet the Commission's 6.1 meter criteria have to be individually licensed. Applications for such CTSs do not have to be filed within the two-day period. Regardless of the number of CTSs in a system that meet the 6.1 meter criteria, however, tentative selectees must file a form 574 and required showings for a "system license" within two days after they are selected.

Sincerely,

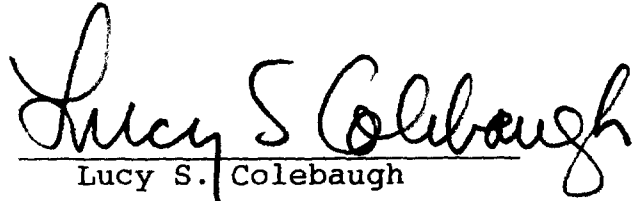
A handwritten signature in dark ink, appearing to read "R. H. McNamara". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Robert H. McNamara
Chief, Special Services Division

CERTIFICATE OF SERVICE

I, Lucy S. Colebaugh, do hereby certify that on this 9th day of November, 1993, I have caused to be hand-delivered a copy of the foregoing "Comments of Radio Telecom and Technology, Inc." to:

Ms. Toni Simmons
Office of Plans and Policy
1919 M St., N.W., Room 802
Federal Communications Commission
Washington, DC 20554


Lucy S. Colebaugh